UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Mayra Goldenberg, Plaintiff, - vs. – T & H Discount, Inc., Tita Mini Market Corp., Anthony's Famous Gourmet Deli, Inc., and Tony Ghazali, Defendants.	DOCKET NO. 17-cv-2008 **COMPLAINT**

Plaintiff Mayra Goldenberg, by and through her undersigned attorneys, for her complaint against Defendants T & H Discount, Inc., Tita Mini Market Corp., Anthony's Famous Gourmet Deli, Inc., and Tony Ghazali, alleges as follows:

NATURE OF THE ACTION

1. Plaintiff Mayra Goldenberg alleges that she is entitled to: (i) unpaid wages from Defendants for overtime work for which she did not receive overtime premium pay as required by law; and (ii) liquidated damages pursuant to the FLSA, 29 U.S.C. §§ 201 *et seq.*, because Defendants' violations lacked a good faith basis.

2. Ms. Goldenberg further complains that she is entitled to (i) back wages for overtime work for which Defendants willfully failed to pay overtime premium pay as

required by the New York Labor Law §§ 650 *et seq.* and the supporting New York State Department of Labor regulations; (ii) compensation for Defendants' violations of the "spread of hours" requirements of New York Labor Law; (iii) compensation for Defendants' violation of the Wage Theft Prevention Act; and (iv) liquidated damages pursuant to New York Labor Law for these violations.

THE PARTIES

3. Plaintiff Mayra Goldenberg is an adult individual residing in Bronx, New York.

4. Ms. Goldenberg consents in writing to be a party to this action pursuant to 29 U.S.C. § 216(b); her written consent is attached hereto and incorporated by reference.

5. Upon information and belief, Defendant T & H Discount, Inc. is a New York corporation that operates T & H Discount, a store/deli with a principal place of business at 171 East Gun Hill Road, Bronx, New York 10467.

6. Upon information and belief, Defendant Tita Mini Market Corp. is a New York corporation that operates T & H Discount, a store/deli with a principal place of business at 171 East Gun Hill Road, Bronx, New York 10467.

7. Upon information and belief, Defendant Anthony's Famous Gourmet Deli, Inc. is a New York corporation that operates T & H Discount, a store/deli with a principal place of business at 171 East Gun Hill Road, Bronx, New York 10467.

8. Together, these three corporations form a single enterprise that owns and operates the store/deli known as T & H Discount.

9. At all relevant times, Defendants have been, and continue to be, an employer engaged in interstate commerce and/or the production of goods for commerce within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).

10. Upon information and belief, at all relevant times, Defendants have had gross revenues in excess of $500,000.00.

11. Upon information and belief, at all relevant times herein, Defendants have used goods and materials produced in interstate commerce, and have employed at least two individuals who handled such goods and materials.

12. Upon information and belief, at all relevant times, Defendants have constituted an "enterprise" as defined in the FLSA.

13. Upon information and belief, Defendant Tony Ghazali is an owner or part owner and principal of the store/deli known as T & H Discount, who has the power to hire and fire employees, set wages and schedules, and maintain their records.

14. Defendant Tony Ghazali was involved in the day-to-day operations of T & H Discount and played an active role in managing the business.

15. Defendants constituted "employers" of Ms. Goldenberg as that term is used in the Fair Labor Standards Act and New York Labor Law.

JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1337 and supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

17. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because Defendants' business is located in this district.

FACTS

18. At all relevant times herein, Defendants owned and operated a store/deli in Bronx, New York.

19. Ms. Goldenberg has been employed by Defendants from approximately November 2014 through December 28, 2016.

20. Ms. Goldenberg worked as a cashier throughout her employment with Defendants.

21. Ms. Goldenberg's work was performed in the normal course of Defendants' business and was integrated into the business of Defendants, and did not involve executive or administrative responsibilities.

22. At all relevant times herein, Ms. Goldenberg was an employee engaged in commerce and/or in the production of goods for commerce, as defined in the FLSA and its implementing regulations.

23. At the beginning of her employment, Ms. Goldenberg worked for Defendants for five days per week, from Monday through Friday.

24. Several weeks later, Ms. Goldenberg began working for six days per week, from Monday through Saturday. She worked this schedule until the end of her employment.

25. Ms. Goldenberg's shifts always lasted from 8:00 A.M. to 8:00 P.M. As a result, Ms. Goldenberg initially worked approximately 60 hours per week. Several weeks later and until the end of her employment, Ms. Goldenberg worked approximately 72 hours per week.

26. Defendants did not provide a time clock, sign in sheet, or any other method for employees to track their time worked.

27. Ms. Goldenberg's salary was paid on an irregular basis during her employment with Defendants, with her pay not varying regardless of the precise number of hours that she worked eachweek.

28. Ms. Goldenberg was paid at the New York minimum wage rate throughout her employment with Defendants. Specifically, Ms. Goldenberg was paid at the rate of $8.00 per hour in 2014, $8.75 per hour in 2015, and $9.00 per hour in 2016.

29. Ms. Goldenberg was paid by cash throughout her employment, and received no paystubs or wage statements with her pay.

30. In addition, Defendants failed to pay Ms. Goldenberg any overtime "bonus" for hours worked beyond 40 hours in a workweek, in violation of the FLSA, the New York Labor Law, and the supporting New York State Department of Labor regulations.

31. Defendants' failure to pay Ms. Goldenberg the overtime bonus for overtime hours worked was willful, and lacked a good faith basis.

32. Throughout her employment, Ms. Goldenberg worked five or six shifts per week that lasted in excess of ten hours from start to finish, yet Defendants willfully failed to pay her one additional hour's pay at the minimum wage for each such day she worked shifts lasting longer than ten hours, in violation of the New York Labor Law and the supporting New York State Department of Labor regulations.

33. Defendants failed to provide Ms. Goldenberg with written notices providing the information required by the Wage Theft Prevention Act – including, *inter alia*, Defendants' contact information, Plaintiff's regular and overtime rates, and intended allowances claimed – and failed to obtain her signature acknowledging the same, upon her

hiring or at any time thereafter, in violation of the Wage Theft Prevention Act in effect at the time.

34. Defendants failed to provide Ms. Goldenberg with weekly records of her compensation and hours worked, in violation of the Wage Theft Prevention Act.

COUNT I

(Fair Labor Standards Act - Overtime)

35. Plaintiff repeats, realleges, and incorporates by reference the foregoing allegations as if set forth fully and again herein.

36. At all relevant times, Defendants employed Ms. Goldenberg within the meaning of the FLSA.

37. At all relevant times, Defendants had a policy and practice of refusing to pay overtime compensation to their employees for hours they worked in excess of forty hours per workweek.

38. As a result of Defendants' willful failure to compensate Ms. Goldenberg at a rate at least one-and-one-half times the regular rate of pay for work performed in excess of forty hours per workweek, Defendants have violated, and continue to violate, the FLSA, 29 U.S.C. §§ 201 *et seq.*, including 29 U.S.C. §§ 207(a)(1) and 215(a).

39. The foregoing conduct, as alleged, constituted a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a), and lacked a good faith basis within the meaning of 29 U.S.C. § 260.

40. Due to Defendants' FLSA violations, Ms. Goldenberg is entitled to recover from Defendants her unpaid overtime compensation, an additional equal amount as

liquidated damages, interest, reasonable attorneys' fees, and costs and disbursements of this action, pursuant to 29 U.S.C. § 216(b).

COUNT II

(New York Labor Law - Overtime)

41. Plaintiff repeats, realleges, and incorporates by reference the foregoing allegations as if set forth fully and again herein.

42. At all relevant times, Ms. Goldenberg was employed by Defendants within the meaning of the New York Labor Law, §§ 2 and 651.

43. Defendants willfully violated Ms. Goldenberg's rights by failing to pay her overtime compensation at rates at least one-and-one-half times her regular rate of pay for each hour worked in excess of forty hours per workweek in violation of the New York Labor Law §§ 650 *et seq.* and its supporting regulations in 12 N.Y.C.R.R. § 146.

44. Defendants' failure to pay overtime was willful, and lacked a good faith basis, within the meaning of New York Labor Law § 198, § 663 and supporting regulations.

45. Due to Defendants' New York Labor Law violations, Ms. Goldenberg is entitled to recover from Defendants her unpaid overtime compensation, liquidated damages, interest, reasonable attorneys' fees, and costs and disbursements of the action, pursuant to New York Labor Law § 198, and § 663(1).

COUNT III

(New York Labor Law – Spread of Hours)

46. Plaintiff repeats, realleges, and incorporates by reference the foregoing allegations as if set forth fully and again herein.

47. At all relevant times, Ms. Goldenberg was employed by Defendants within the meaning of the New York Labor Law, §§ 2 and 651.

48. Defendants willfully violated Ms. Goldenberg's rights by failing to pay her an additional hour's pay at the minimum wage for each day she worked a shift lasting longer than ten hours, in violation of the New York Labor Law §§ 650 *et seq*. and its supporting regulations in 12 N.Y.C.R.R. § 146-1.6.

49. Defendants' failure to pay the "spread of hours" premium was willful, and lacked a good faith basis, within the meaning of New York Labor Law § 198, § 663 and supporting regulations.

50. Due to Defendants' New York Labor Law violations, Ms. Goldenberg is entitled to recover from Defendants her unpaid compensation, liquidated damages, interest, reasonable attorneys' fees, and costs and disbursements of the action, pursuant to New York Labor Law § 198, and § 663(1).

COUNT IV

(New York Labor Law – Wage Theft Prevention Act)

51. Plaintiff repeats, realleges, and incorporates by reference the foregoing allegations as if set forth fully and again herein.

52. At all relevant times, Ms. Goldenberg was employed by Defendants within the meaning of the New York Labor Law, §§ 2 and 651.

53. Defendants willfully violated Ms. Goldenberg's rights by failing to provide her with the wage notices required by the Wage Theft Prevention Act when she was hired, or at any time thereafter.

54. Defendants willfully violated Ms. Goldenberg's rights by failing to provide her with weekly wage statements required by the Wage Theft Prevention Act at any time during her employment.

55. Due to Defendants' New York Labor Law violations relating to the failure to provide paystubs, Ms. Goldenberg is entitled to recover from Defendants statutory damages of $100 per week through February 26, 2015, and $250 per day from February 27, 2015 through the end of her employment, up to the maximum statutory damages.

56. Due to Defendants' New York Labor Law violations relating to the failure to provide wage notices, Ms. Goldenberg is entitled to recover from Defendants statutory damages of $50 per week through February 26, 2015, and $50 per day from February 27, 2015 to the termination of her employment, up to the maximum statutory damages.

PRAYER FOR RELIEF

WHEREFORE, Ms. Goldenberg respectfully requests that this Court grant the following relief:

a. A declaratory judgment that the practices complained of herein are unlawful under the FLSA and the New York Labor Law;

b. An injunction against Defendants and their officers, agents, successors, employees, representatives, and any and all persons acting in concert with them, as provided by law, from engaging in each of the unlawful practices, policies, and patterns set forth herein;

c. A compensatory award of unpaid compensation, at the statutory overtime rate, due under the FLSA and the New York Labor Law;

d. An award of liquidated damages as a result of Defendants' willful failure to pay overtime compensation pursuant to 29 U.S.C. § 216;

e. Compensatory damages for failure to pay the "spread of hours" premiums required by New York Labor Law;

f. Liquidated damages for Defendants' New York Labor Law violations;

g. Statutory damages for Defendants' violations of the New York Wage Theft Prevention Act;

h. Back pay;

i. Punitive damages;

j. An award of prejudgment and post-judgment interest;

k. An award of costs and expenses of this action together with reasonable attorneys' and expert fees; and

l. Such other, further, and different relief as this Court deems just and proper.

Dated: March 20, 2017

/s/ Michael Samuel
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EXHIBIT A

CONSENT TO SUE

By my signature below, I hereby authorize the filing and prosecution of claims in my name and on my behalf to contest the failure of T and H and its owners and affiliates to pay me, *inter alia*, minimum wage and overtime wages as required under state and/or federal law and also authorize the filing of this consent in the lawsuit challenging such conduct, and consent to being named as a representative plaintiff in this action to make decisions on behalf of all other plaintiffs concerning all aspects of this lawsuit. I have been provided with a copy of a retainer agreement with the law firm of Samuel & Stein, and I agree to be bound by its terms.

Con mi firma abajo, autorizo la presentación y tramitación de reclamaciones en mi nombre y de mi parte para impugnar el fallo de T and H. y sus propietarios y afiliados a me pagan, entre otras cosas, el salario mínimo y pago de horas extras, requerida en el estado y / o la ley federal y también autorizan la presentación de este consentimiento en la demanda contra ese tipo de conducta, y el consentimiento para ser nombrado como demandante representante en esta acción para tomar decisiones en nombre de todos los demás demandantes en relación con todos aspectos de esta demanda. Se me ha proporcionado una copia de un acuerdo de retención con la firma de abogados de Samuel y Stein, y estoy de acuerdo en estar obligado por sus términos..

Mayra Goldenberg

Mayra Goldenberg

Date: January 15, 2017